

The Award entered by the Administrative Law Judge should be affirmed.

The claimant, now deceased, worked for the respondent for approximately nine months from July 3, 1990 until April 15, 1991 when his physician recommended he discontinue work. The decedent's job was to test hazardous waste material to determine if it could be used as a fuel source. The decedent testified he believed he was exposed to heavy metals due to the laboratory tests he performed on the various hazardous materials he handled.

Decedent died on January 2, 1992 from the disease amyotrophic lateral sclerosis (ALS). Decedent's family contends heavy metals exposure caused decedent's ALS.

Three experts testified in this proceeding. Louis W. Chang, Ph.D., a professor in pathology, pharmacology, and toxicology at the University of Arkansas Medical School, testified as an expert witness on behalf of the decedent's family. Anthony Windebank, M.D., board certified in neurology and psychiatry and Dean of the Mayo Clinic Medical School, and David W. Kimmel, M.D., a board certified neurologist at the Mayo Clinic, testified as treating physicians on behalf of the respondent.

Dr. Chang testified that ALS is a degeneration of the motor neurons, the neurons that control body functions. He agrees with both Drs. Windebank and Kimmel that the cause of ALS is not known and agreed there are three major theories—genetics, viral infection and heavy metals exposure. Although he admitted he was unable to say whether decedent had ALS at the time he began working for the respondent in July 1990, Dr. Chang testified he believed the decedent's disease was caused by heavy metals exposure while working for the respondent.

Dr. Kimmel first examined decedent in April 1991 and initially suspected ALS. He later diagnosed the disease after a second examination in September 1991. Dr. Kimmel called in Dr. Windebank because of his special interest in ALS. Dr. Windebank conducts medical research involving heavy metals and their effect on the nervous system and leads a group of physicians at the Mayo Clinic who concentrate on the clinical management of ALS patients. Also, he has served on the Scientific Review Council of the ALS Association, the national association that funds ALS research. He examined decedent in September 1991 and also diagnosed ALS. Both Drs. Kimmel and Windebank testified ALS has no known cause. In addition, Dr. Windebank testified that medical research has been unable to link heavy metals exposure to ALS, although a potential relationship is one of the older theories. He could not state that it was more probably true than not that decedent's alleged heavy metals exposure caused his disease.

Based upon the expert opinions provided, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed. ALS is a debilitating disease of unknown cause. Although there are suspicions, there is no medical research that actually links ALS to heavy metals exposure. The Appeals Board finds the opinions of Dr. Windebank to be credible and persuasive due to his experience and knowledge in the ALS field, together with his seemingly neutral and unbiased position in this litigation.

The Appeals Board hereby adopts the findings and conclusions of the Administrative Law Judge as set forth in the Award to the extent they are not inconsistent with the specific findings made herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated January 29, 1996, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
 J. Darin Hayes, Wichita, KS
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director